

## Chapter 13

### 1977 REPLACEMENT PART

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## DESIGNATION

**13.010 Parties, how designated.** In an action, suit or special proceeding the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

**13.020 Designating party by fictitious name; substitution of true name.** (1) Until a party's true name is discovered, he may be designated in any pleading or proceeding by any name.

(2) Any party to a proceeding may at any time, whether before or after judgment or decree, correct the name by which he or any other party is designated upon application to the court supported by affidavit. Each party to the proceeding shall be entitled to notice of the application and, if he objects to the correction, to a hearing on the matter.  
[Amended by 1975 c 457 §1]

**13.030 Real party in interest; except fiduciary.** Every action or suit shall be prosecuted in the name of the real party in interest, except that an executor or an administrator, a trustee of an express trust, or a person expressly authorized to sue by statute, may sue without joining with him the person for whose benefit the action or suit is prosecuted. A person with whom, or in whose name a contract is made for the benefit of another, is a trustee of an express trust within the meaning of this section. This section does not authorize the assignment of a thing in action not arising out of contract.

13.040 [Repealed by 1961 c 344 §109]

**13.041 Appearance of minor parties by guardian or conservator.** When a minor who has a conservator of his estate or a guardian is a party to any action, suit or proceeding, he shall appear by the conservator or guardian as may be appropriate or, if the court so orders, by a guardian ad litem appointed by the court in which the action, suit or proceeding is brought. If the minor does not have a conservator of his estate or a guardian, he shall appear by a guardian ad litem appointed by the court. The court shall appoint some suitable person to act as guardian ad litem:

(1) When the minor is plaintiff, upon application of the minor, if the minor is 14 years of age or older, or upon application of a relative or friend of the minor if the minor is under 14 years of age.

(2) When the minor is defendant, upon application of the minor, if the minor is 14 years of age or older, filed within the period of time specified by law for appearance and

answer after service of summons, or if the minor fails so to apply or is under 14 years of age, upon application of any other party or of a relative or friend of the minor.  
[1961 c.344 §96, 1973 c.823 §85]

13.050 [Repealed by 1961 c 344 §109]

**13.051 Appearance of incapacitated person by conservator or guardian.** When an incapacitated person who has a conservator of his estate or a guardian is a party to any action, suit or proceeding, he shall appear by the conservator or guardian as may be appropriate or, if the court so orders, by a guardian ad litem appointed by the court in which the action, suit or proceeding is brought. If the incapacitated person does not have a conservator of his estate or a guardian, he shall appear by a guardian ad litem appointed by the court. The court shall appoint some suitable person to act as guardian ad litem:

(1) When the incapacitated person is plaintiff, upon application of a relative or friend of the incapacitated person.

(2) When the incapacitated person is defendant, upon application of a relative or friend of the incapacitated person filed within the period of time specified by law for appearance and answer after service of summons, or if the application is not so filed, upon application of any party other than the incapacitated person.  
[1961 c 344 §97, 1973 c 823 §86]

**13.060 Designation of unknown heirs in actions and suits relating to real property.** When the heirs of any deceased person are proper parties defendant to any suit or action relating to real property in this state, and the names and residences of such heirs are unknown, they may be proceeded against under the name and title of "the unknown heirs" of the deceased.

**13.070 When unknown claimants are proper parties.** In any suit or action to determine any adverse claim, estate, lien or interest in real property, or to quiet title to real property, the plaintiff may include as a defendant in such suit or action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have, some title, claim, estate, lien or interest in the real property in controversy, the following: "Also all other persons or parties unknown claiming any right, title, estate, lien or interest in the real property described in the complaint herein."

**13.080 Nonabatement of action or suit by death, disability or transfer; continuing proceedings.** (1) No action or suit shall abate by the death or disability of a party, or by the transfer of any interest therein.

(2) In case of the death of a party, the court shall, on motion, allow the action or suit to be continued:

(a) By his personal representative or successors in interest at any time within one year after his death.

(b) Against his personal representative or successors in interest at any time within four months after the date of the first publication of notice to interested persons, but not more than one year after his death.

(3) In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action or suit to be continued by or against his guardian or conservator or successors in interest.

(4) In case of the transfer of an interest in the action or suit, the court may, on motion, allow the action or suit to be continued by or against the successors in interest of the transferor.

[Amended by 1969 c 591 §269, 1975 c 108 §1]

**13.090 Death of party after verdict does not abate action for wrong.** An action for a wrong shall not abate by the death of any party, after a verdict has been given therein, but the action shall proceed thereafter in the same manner as in cases where the cause of action survives.

## JOINDER

**13.110 When new parties must be brought in.** In actions or suits the court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy can not be had without the presence of other parties, the court shall cause them to be brought in.

**13.120 Interpleader.** In any action or suit for the recovery of specific personal property, if a third person demands of the defendant the same property, the court in its discretion, on motion of the defendant, and notice to such person and the adverse party, may, before answer, make an order discharging the defendant from liability to either party, and substitute such person in his place as defendant. The order shall not be made

except on the condition that the defendant deliver the property or its value to such person as the court may direct, and unless it appears from the affidavit of the defendant, filed with the clerk by the day he is otherwise required to answer, that such person makes such demand without collusion with the defendant. The affidavit of such third person as to whether he makes such demand of the defendant may be read on the hearing of the motion.

**13.130 Intervention.** At any time before trial any person who has an interest in the matter in litigation may, by leave of court, intervene. Intervention takes place when a third person is permitted to become a party to a suit, action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant. Intervention is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court and served upon the parties who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it within 10 days from the service thereof, if served within the county wherein the suit, action or proceeding is pending, or within 20 days if served elsewhere.

**13.140 Joinder of persons severally liable.** Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may, all or any of them, be included in the same action or suit, at the option of the plaintiff.

**13.150 Joinder of owners in actions or suits relating to real property; owners of separate parcels.** In suits and actions relating to the title to real property or the right to the possession thereof, owners in common taking their titles directly by the same written instrument or by inheritance directly from the same common ancestor may be joined as plaintiff or defendant, as the case may be. In case a defect in, or cloud on, the title to real property affects more than one parcel thereof separately owned, the owners may be joined as parties plaintiff or defendant in any suit to quiet title to the parcel owned by each. This section shall not cut off any right of joinder of parties which otherwise existed heretofore.

**13.160** [Amended by 1975 c 158 §4, repealed by 1977 c 154 §1 (13 161 enacted in lieu of 13 160)]

**13.161 Permissive joinder as plaintiffs or defendants.** (1) All persons may join in one action or suit as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action.

(2) All persons may be joined in one action or suit as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

(3) A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(4) The court may make such orders as will prevent a party from being embarrassed, delayed, or put to unnecessary expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

[1977 c.154 §2 (enacted in lieu of 13 160)]

**13.170 Compulsory joinder.** Parties to a suit or action who are united in interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have been joined as plaintiff can not be obtained, he may be made a defendant, the reason being stated in the complaint.

[Amended by 1973 c.349 §11, 1975 c 158 §5]

**13.180 Joinder of persons in contract actions or suits.** (1) The defendant may, in an action or suit on a contract brought by an assignee of rights under that contract, join as a party to the action or suit the maker of that contract if the defendant has a claim against the maker of the contract arising out of that contract.

(2) A defendant may, in an action or suit on a contract brought by an assignee of rights under that contract, join as parties to that action all or any persons liable for attorney fees under ORS 20.097.

(3) As used in this section:

(a) "Maker" means the original party to the contract which is the subject of the action

or suit who is the predecessor in interest of the plaintiff under the contract; and

(b) "Contract" includes any instrument or document evidencing a debt.

[1975 c.623 §5]

**13.190 State agencies as parties in governmental administration proceedings.** In any action, suit or proceeding arising out of county administration of functions delegated or contracted to the county by a state agency, the state agency must be made a party to the action, suit or proceeding.

[1975 c.623 §13]

## CLASS ACTIONS

**13.210 Definitions for ORS 13.210 to 13.410.** As used in ORS 13.210 to 13.410:

(1) "Action" means an action, suit or proceeding.

(2) "Court" means circuit or district court.

[1975 c 349 §1]

**13.220 Requirement for class action; when maintainable.** (1) One or more members of a class may sue or be sued as representative parties on behalf of all only if:

(a) The class is so numerous that joinder of all members is impracticable; and

(b) There are questions of law or fact common to the class; and

(c) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(d) The representative parties will fairly and adequately protect the interests of the class; and

(e) In an action for damages under paragraph (c) of subsection (2) of this section, the representative parties have complied with the prelitigation notice provisions of ORS 13.280.

(2) An action may be maintained as a class action if the prerequisites of subsection (1) of this section are satisfied, and in addition:

(a) The prosecution of separate actions by or against individual members of the class would create a risk of:

(A) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(B) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests

of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(b) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(c) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Common questions of law or fact shall not be deemed to predominate over questions affecting only individual members if the court finds it likely that final determination of the action will require separate adjudications of the claims of numerous members of the class, unless the separate adjudications relate primarily to the calculation of damages. The matters pertinent to the findings include:

(A) The interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) The desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) The difficulties likely to be encountered in the management of a class action, including the feasibility of giving adequate notice;

(E) The likelihood the damages to be recovered by individual class members if judgment for the class is entered are so minimal as not to warrant the intervention of the court;

(F) After a preliminary hearing or otherwise, the determination by the court that the probability of sustaining the claim or defense is minimal.

(3) In an action commenced pursuant to paragraph (c) of subsection (2) of this section, the court shall consider whether justice in the action would be more efficiently served by maintenance of the action in lieu thereof as a class action pursuant to paragraph (b) of subsection (2) of this section.

[1973 c 349 §2]

**13.230 Court order to determine maintenance of class actions.** As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained and, in an action pursuant to paragraph (c) of subsection (2) of ORS 13.220, the court shall find the facts specially and state separately its conclusions thereon. An order under this section may be conditional, and may be altered or amended before the decision on the merits.

[1973 c 349 §3]

**13.240 Dismissal or compromise of class actions; court approval required; when notice required.** A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs, except that if the dismissal is to be without prejudice or with prejudice against the class representative only, then such dismissal may be ordered without notice if there is a showing that no compensation in any form has passed directly or indirectly from the party opposing the class to the class representative or to his attorney and that no promise to give any such compensation has been made. If the statute of limitations has run or may run against the claim of any class member, the court may require appropriate notice.

[1973 c 349 §8]

**13.250 Court authority over conduct of class actions.** In the conduct of actions to which ORS 13.210 to 13.410 apply, the court may make appropriate orders which may be altered or amended as may be desirable:

(1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) Imposing conditions on the representative parties or on intervenors;

(4) Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(5) Dealing with similar procedural matters.

[1973 c 349 §7]

**13.260 Notice required; content; statements of class members required; form; content; amount of damages; effect of failure to file required statement; stay of action in certain cases.** In any class action maintained under paragraph (c) of subsection (2) of ORS 13.220:

(1) The court shall direct to the members of the class the best notice practicable under the circumstances. Individual notice shall be given to all members who can be identified through reasonable effort. The notice shall advise each member that:

(a) The court will exclude him from the class if he so requests by a specified date;

(b) The judgment, whether favorable or not, will include all members who do not request exclusion; and

(c) Any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(2) Prior to the final entry of a judgment against a defendant the court shall request members of the class to submit a statement in a form prescribed by the court requesting affirmative relief which may also, where appropriate, require information regarding the nature of the loss, injury, claim, transactional relationship, or damage. The statement shall be designed to meet the ends of justice. In determining the form of the statement, the court shall consider the nature of the acts of the defendant, the amount of knowledge a class member would have about the extent of his damages, the nature of the class, including the probable degree of sophistication of its members and the availability of relevant information from sources other than the individual class members. The amount of damages assessed against the defendant shall not exceed the total amount of damages determined to be allowable by the court for each individual class member, assessable court costs, and an award of attorney fees, if any, as determined by the court.

(3) Failure of a class member to file a statement required by the court will be grounds for the entry of judgment dismissing his claim without prejudice to his right to

maintain an individual, but not a class, action for such claim.

(4) Where a party has relied upon a statute or law which another party seeks to have declared invalid, or where a party has in good faith relied upon any legislative, judicial, or administrative interpretation or regulation which would necessarily have to be voided or held inapplicable if another party is to prevail in the class action, the action shall be stayed until the court has made a determination as to the validity or applicability of the statute, law, interpretation or regulation.

[1973 c.349 §4]

**13.270 Commencement or maintenance of class actions regarding particular issues; division of class; subclasses.** When appropriate:

(1) An action may be brought or maintained as a class action with respect to particular issues; or

(2) A class may be divided into subclasses and each subclass treated as a class, and the provisions of ORS 13.210 to 13.410 shall then be construed and applied accordingly.

[1973 c 349 §6]

**13.280 Notice and demand required prior to commencement of action for damages under ORS 13.220.** (1) Thirty days or more prior to the commencement of an action for damages pursuant to the provisions of paragraph (c) of subsection (2) of ORS 13.220, the potential plaintiffs' class representative shall:

(a) Notify the potential defendant of the particular alleged cause of action.

(b) Demand that such person correct or rectify the alleged wrong.

(2) Such notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred, such person's principal place of business within this state, or, if neither will effect actual notice, the office of the Secretary of State.

[1973 c 349 §12]

**13.290 Limitation on maintenance of class actions for damages.** No action for damages may be maintained under the provisions of ORS 13.220 upon a showing by a defendant that all of the following exist:

(1) All potential class members similarly situated have been identified, or a reasonable effort to identify such other people has been made;

(2) All potential class members so identified have been notified that upon their request the defendant will make the appropriate compensation, correction or remedy of the alleged wrong;

(3) Such compensation, correction or remedy has been, or, in a reasonable time, will be, given; and

(4) Such person has ceased from engaging in, or if immediate cessation is impossible or unreasonably expensive under the circumstances, such person will, within a reasonable time, cease to engage in, such methods, acts or practices alleged to be violative of the rights of potential class members.

[1973 c 349 §13]

**13.300 Application of ORS 13.280 and 13.290 to suits for equitable relief; amendment of complaints for equitable relief to request damages permitted.** A suit for equitable relief brought under ORS 13.220 may be commenced without compliance with the provisions of ORS 13.280. Not less than 30 days after the commencement of a suit for equitable relief, and after compliance with the provisions of ORS 13.280, the class representative may amend his complaint without leave of court to include a request for damages. The provisions of ORS 13.290 shall be applicable if the complaint for injunctive relief is amended to request damages.

[1973 c.349 §14]

**13.310 Evidence of compliance with or attempt to comply with ORS 13.290; when admissible.** Attempts to comply with the provisions of ORS 13.290 by a person receiving a demand shall be construed to be an offer to compromise and shall be inadmissible as evidence. Such attempts to comply with a demand shall not be considered an admission of engaging in the act or practice alleged to be unlawful nor of the unlawfulness of that act. Evidence of compliance or attempts to comply with the provisions of ORS 13.290 may be introduced by a defendant for the purpose of establishing good faith or to show compliance with the provisions of ORS 13.290.

[1973 c 349 §15]

**13.320 Limitation on maintenance of class actions for recovery of certain statutory minimum penalties.** A class action may not be maintained for the recovery of statutory minimum penalties for any class member as provided for in ORS 646.638 or 15 U.S.C. 1640(a) or any other similar statute.

[1973 c.349 §9]

**13.330 Coordination of pending class actions sharing common question of law or fact; who may request; assignment of judge to determine appropriateness; standards.** (1) When class actions sharing a common question of fact or law are pending in different courts, the presiding judge of any such court, on his own motion or the motion of any party may request the Supreme Court to assign a circuit court, Court of Appeals, or Supreme Court judge to determine whether coordination of the actions is appropriate, and a judge shall be so assigned to make that determination.

(2) Coordination of class actions sharing a common question of fact or law is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and the likelihood of settlement of the actions without further litigation should coordination be denied.

[1973 c.349 §§16, 17, 1974 s s c 29 §1]

**13.340 Order to coordinate actions; report; assignment of judge.** If the assigned judge determines that coordination is appropriate, he shall order the actions coordinated, report that fact to the Chief Justice of the Supreme Court, and the Chief Justice shall assign a judge to hear and determine the actions in the site or sites he deems appropriate.

[1973 c 349 §18]

**13.350 Coordination of pending action sharing common question of law or fact with coordinated actions.** The judge of any court in which there is pending an action sharing a common question of fact or law with coordinated actions, on his own motion or the motion of any party may request the judge assigned to hear the coordinated action for an order coordinating such actions. Coordination of the action pending before the judge so requesting shall be determined under the standards specified in subsection (2) of ORS 13.330.

[1973 c 349 §19]

**13.360 Stay of actions being considered for or affecting coordination.** Pending any determination of whether coordination is appropriate, the judge assigned to make the determination may stay any action being considered for, or affecting any action being considered for, coordination.  
[1973 c.349 §20]

**13.370 Supreme Court rules governing coordination of class actions.** Notwithstanding any other provision of law, the Supreme Court shall provide by rule the practice and procedure for coordination of class actions in convenient courts, including provision for giving notice and presenting evidence.  
[1973 c.349 §21; 1974 s.s. c.29 §2]

**13.380 Judgment; inclusion of class members; description; names.** The judgment in an action maintained as a class action under paragraph (a) or (b) of subsection (2) of ORS 13.220, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under paragraph (c) of subsection (2) of ORS 13.220, whether or not favorable to the class, shall include and specify by name those to whom the notice provided in ORS 13.260 was directed, and whom the court finds to be members of the class, and the judgment shall state the amount to be recovered by each member.  
[1973 c.349 §5]

**13.390 Attorney fees.** Any award of attorney fees against the party opposing the class and any fee charged class members shall

be reasonable and shall be set by the court.  
[1973 c.349 §10]

**13.400 Appeal of certain court orders involving questions of law; application; effect of application.** When a district or circuit court judge, in making in a class suit or action an order not otherwise appealable, is of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals or the Supreme Court, whichever court has jurisdiction over the subject matter of the case, may thereupon, in its discretion, permit an appeal to be taken from such order to the Supreme Court or the Court of Appeals if application is made to the appropriate court within 10 days after the entry of the order; however, application for such an appeal shall not stay proceedings in the district or circuit court unless the district or circuit judge or the Supreme Court or the Court of Appeals or a judge thereof shall so order.  
[1973 c.349 §22]

**13.410 Appeals to Supreme Court; determination of amount in controversy.** The aggregate amount of the claims of all potential class members shall determine whether the amount in controversy is sufficient to satisfy the provisions of subsection (3) of ORS 19.010 for the purposes of any appeal to the Supreme Court.  
[1973 c.349 §23]

#### CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.  
Done at Salem, Oregon,  
October 1, 1977

Thomas G. Clifford  
Legislative Counsel

